



U.S. Department of Justice

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By ECF

Honorable Ann M. Donnelly
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

June 1, 2026

Re: *Orellana Lainez v. Blanche, et al.*, No. 26-cv-03103 (Donnelly, J.)

Dear Judge Donnelly:

This Office represents Respondents in this habeas matter, in which Petitioner Jose Williams Orellana Lainez ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). See ECF No. 1 and ECF No. 9 (the "Petition"). Respondents write respectfully in response to the Court's Order dated May 28, 2026, directing Respondents, *inter alia*, to show cause why the Petition should not be granted. See ECF Docket Text Order to Show Cause dated May 28, 2026 ("Order").

Respondents respectfully submit that the Petition should be denied. For reasons set forth below, the Court should dismiss the Petition as jurisdictionally barred by several subsections of 8 U.S.C. § 1252. Alternatively, the Court should deny the Petition on the merits, because Petitioner is subject to a final order of removal – *i.e.* a reinstated expedited removal order -- and is therefore lawfully detained pursuant to 8 U.S.C. § 1231(a)(5).¹ And because this action should be dismissed, the Court should vacate its prior Order that to the extent that it prohibits Respondents from removing Petitioner.

Relevant Background

Petitioner is a native and citizen of Honduras. See Declaration of Frank Franco ("Decl."), ¶ 3.

On March 20, 2012, the Laredo Police Department ("Laredo PD") encountered Petitioner pursuant to a vehicle stop after Petitioner had unlawfully crossed the Rio Grande River at or near Laredo, Texas without being admitted, paroled or inspected to the United States. Decl. ¶4. Laredo PD turned over Petitioner to the Laredo South Border Patrol of the U.S. Customs and Border Protection ("CBP") for processing. *Id.* Border Patrol conducted an oral interview of Petitioner for Expedited Removal in Spanish, during which Petitioner admitted he was a citizen and national of Honduras and did not possess valid documentation to enter or remain lawfully in the United States.

¹ The Second Circuit's opinion in *Barbosa da Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2d Cir. Apr. 28, 2026) is not applicable here.

Id. Petitioner also stated that he did not fear harm if he returned to his home country. *Id.* This same day, a Border Patrol Agent issued Petitioner a Notice and Order of Expedited Removal (Form I-860), charging inadmissibility pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.* as amended [8 U.S.C. § 1182(a)(7)(A)(i)(I)]. *Id.*

On April 9, 2012, a Notice to Alien Ordered Removed/Departure Verification (Form I-296), was served on Petitioner finding Petitioner inadmissible to the United States under INA § 212(a)(9) [8 U.S.C. § 1182(a)(9)], prohibiting him from entering, attempting to enter or being in the United States for a period of 5 years from the date of his departure for the United States, as a consequence of having been found inadmissible as an arriving alien in proceedings under INA § 235(b)(1) [8 U.S.C. § 1225(b)(1)]. Decl. ¶7. He did not assert a fear of returning to his home country and was detained pending removal. *Id.* On this date, Petitioner was removed to Honduras via an ICE charter flight. Decl. ¶8.

On February 6, 2014, Petitioner was again encountered by Border Patrol. Decl. ¶9. Border Patrol provided Petitioner with a Notice of Intent/Decision to Reinstate Prior Order (Form I-871), which stated that Petitioner been identified as an alien ordered removed on April 9, 2012 and that he was subject to removal under the reinstatement of that prior 2012 removal order. *Id.* On February 7, 2014, Border Patrol provided Petitioner a Form I-294 Warning to Alien Ordered Removed or Deported, which prohibited Petitioner from entering, attempting to enter, or being in the United States for a period of 20 years from the date of his departure from the United States. Decl. ¶10. Petitioner was also provided a Form I-205 Warrant of Removal/Deportation reflecting removal warranted based on a reinstatement of its 2012 removal order, under INA § 241(a)(5) [8 U.S.C. § 1231(a)(5)]. *Id.*

On February 12, 2014, Petitioner was removed to Honduras via ICE Air. Decl. ¶11.

On May 14, 2026, at approximately 7:10 a.m., ICE officers observed a male who matched the description of an intended target and who turned out to be Petitioner. Decl. ¶14. ICE observed Petitioner outside the target’s listed residence get into a vehicle with three other male individuals. *Id.* ICE Officers initiated a vehicle stop in the vicinity of Route 208 and the entrance of Route 17M in Monroe, New York. *Id.* ICE Officers, in high visibility police markings, approached the vehicle which had tinted windows to the rear passenger seats. *Id.* At this time, ICE Officers identified themselves and asked the driver – who was Petitioner--for his name for identification purposes. *Id.* The driver refused to open the door and refused to put the vehicle into park. *Id.* ICE Officers requested the driver to open the window multiple times in order to identify the subjects in the back seat. *Id.* The driver refused to open the window. *Id.* ICE Officers broke the window of the vehicle. *Id.* The officers asked the driver to put the vehicle in park and to step out of the vehicle. *Id.* Petitioner stepped out and presented a New York State Driver License. *Id.* ICE Officers conducted a records check on the scene which revealed that Petitioner was a re-entry who had been removed from the United States two times. *Id.* Petitioner admitted to ICE Officers that he was born in Honduras and voluntarily admitted that he illegally entered the United States along the U.S./Mexico border sometime in 2014. *Id.* Records checks also revealed Petitioner did not have legal status or any entry information following his 2014 removal. *Id.*; *see also* Ex. H.

On May 14, 2026, at approximately 7:15 a.m., ICE Officers arrested Petitioner without a warrant pursuant to 8 C.F.R. 287.8(C)(2)(iii) because they determined he was flight risk and was

likely to abscond before a warrant could be obtained based on his two prior removal orders, his unlawful entry into the United States without inspection, as well as his limited ties to the community. Decl. ¶15. Petitioner was detained pursuant to INA § 241(a)(5) [8 U.S.C. § 1231(a)(5)] and transported to the ICE Newburgh Sub Office for processing. During processing, ICE reinstated the 2012 removal order by completing a Notice of Intent/Decision to Reinstate Warning for Failure to Depart Order (Form I-871). Decl. ¶16, Ex. I. ICE also completed a Form I-205 Warrant of Removal/Deportation reflecting removal warranted based on a reinstatement of its 2012 removal order, under INA § 241(a)(5) [8 U.S.C. § 1231(a)(5)] and 212(a)(6)(A)(i) of the INA [8 U.S.C. § 1182(a)(6)(A)(i)]. Decl. ¶17, Ex. J.

Petitioner remains detained at the Brooklyn Metropolitan Detention Center in Brooklyn, New York, pursuant to INA § 241(a)(5) [8 U.S.C. § 1231(a)(5)] for the purpose of effectuating his removal. Decl. ¶20.

Petitioner commenced this action on May 18, 2026. *See* ECF No. 1. Pursuant to this Court's Order to Show Cause dated May 28, 2026, this Court, *inter alia*, prohibited Respondents, absent a further order, from removing Petitioner from the United States and from moving Petitioner to a location outside this District. That prohibition is now the sole impediment to the removal of Petitioner. Decl. ¶ 21. Honduras participates in the Electronic Nationality Verification Program, which facilitates removal to that country of an individual without a current or valid transportation document already available. *Id.* Through this program, a temporary travel document will be quickly and electronically procured for the Petitioner, with his nationality and citizenship being verified through biographic and biometric information. *Id.*

Legal Argument

It is “‘axiomatic’ under the principle of sovereign immunity ‘that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.’” *Adeleke v. United States*, 355 F.3d 144, 150 (2d Cir. 2004) (quoting *United States v. Mitchell*, 463 U.S. 206, 212 (1983)) (collecting cases). When the United States waives its immunity from suit, “limitations and conditions upon which the Government consents to be sued must be strictly observed, and exceptions thereto are not to be implied.” *Lehman v. Nakshian*, 453 U.S. 156, 161 (1981); *see also United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992). Many statutes independently bar judicial review by this Court: 8 U.S.C. §§ 1252(a)(5), (b)(9), and (g). Thus, this Court lacks jurisdiction.²

I. THIS COURT LACKS JURISDICTION OVER THIS ACTION BECAUSE THIS ACTION IS A CHALLENGE TO A REMOVAL ORDER

This action is, in substance, a challenge to the Petitioner's reinstated final order of removal, and, therefore, is barred because Congress has enacted jurisdiction-stripping statutes that preclude the district courts from hearing challenges to the validity of a final order of removal.

² Dismissal of an action is warranted under Fed. R. Civ. P. 12(b)(1) when “the district court lacks statutory or constitutional power to adjudicate it.” *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). The plaintiff bears the burden of showing – by a preponderance of evidence – that the court has jurisdiction. *See id.* Courts may refer to evidence outside the pleadings. *Id.*

A. This Action Is Jurisdictionally Barred By 8 U.S.C. §§ 1252(a)(5), 1252(b)(9)

8 U.S.C. § 1252(a)(5) provides in relevant part that “a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal.” As a corollary to § 1252(a)(5), 8 U.S.C. § 1252(b)(9) provides that “[j]udicial review of all questions of law and fact” arising from a removal proceeding “shall be available only in judicial review of a final order” of removal, and “no court shall have jurisdiction . . . by any other provision of law . . . to review such an order or such questions of law or fact.” Thus, section 1252(a)(5) gives the courts of appeals exclusive jurisdiction over review of final orders of removal. *Ruiz-Martinez v. Mukasey*, 516 F.3d 102, 105 (2d Cir. 2008). The “clear intent” of Congress in enacting § 1252(a)(5) was “to have all challenges to removal orders heard in a single forum,’ *i.e.*, the courts of appeals.” *Spina v. DHS*, 470 F.3d 116, 124 (2d Cir. 2006) (quotation omitted). “[T]aken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue – whether legal or factual – arising from *any* removal-related activity can be reviewed *only* through’ a petition for review filed with an appropriate court of appeals.” *Asylum Seeker Advocacy Project v. Barr*, 409 F. Supp. 3d 221, 224 (S.D.N.Y. 2019) (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis by *J.E.F.M.*)); *accord Rodriguez v. Warden, Orange County Correctional Facility*, No. 23-cv-242, 2023 WL 2632200, at *4 (S.D.N.Y. Mar. 23, 2023).

The Second Circuit has construed §§ 1252(a)(5) and 1252(b)(9) broadly to preclude district courts from exercising subject matter jurisdiction over an action that even “indirectly challeng[es]” an order of removal. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). In determining whether an action challenges an order of removal, the Second Circuit looks to “the substance of the relief that [the] plaintiff is seeking.” *Id.*

Delgado is instructive. *Delgado* was subject to an expedited removal order. *Delgado*, 643 F.3d at 55. *Delgado* filed an action in district court under the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (“APA”) to compel USCIS to adjudicate her application for a waiver of inadmissibility. *Id.* at 53-54. The Second Circuit held that §§ 1252(a)(5) and 1252(b)(9) precluded the district court from exercising jurisdiction over the action, because the action was, however indirectly, a challenge to the order of removal: if USCIS were ordered to adjudicate the application, and were to grant the waiver, she would satisfy a necessary requirement for adjustment of status, and if she then succeeded in having her status adjusted, her removal order would be rendered invalid. *Id.* at 55; *accord, Singh v. USCIS*, 878 F.3d 441, 445-46 (2d Cir. 2017) (holding that § 1252(a)(5) precluded the district court from exercising jurisdiction over an action to compel USCIS to adjudicate the merits of the plaintiff’s application for adjustment of status because ordering USCIS to consider that application could lead USCIS to approve that application, which in turn would lead to the nullification of his removal order); *Villatoro v. Noem*, No. 25-cv-5306, 2025 WL 2880140, at *3 (E.D.N.Y. Oct. 9, 2025) (Merchant, J.) (“[t]he plain language of Section 1252 precludes district courts from exercising jurisdiction over direct challenges to removal orders”); *Lopez Galvez v. Noem*, 25-cv-3229, 2025 WL 1823549, at *1 (E.D.N.Y. July 1, 2025) (Seybert, J.) (“§ 1252(a)(5) is a jurisdictional bar to [the court’s] consideration of Petitioner’s indirect challenge” to her removal order); *Leybinsky v. USCIS*, No. 19-cv-6154, 2021 WL 4407829, at *3-4 (E.D.N.Y. Sept. 26, 2021) (Kovner, J.) (§ 1252(a)(5) barred claim for district court order vacating the plaintiff’s order of removal).

Notably, the §§ 1252(a)(5) and 1252(b)(9) jurisdictional bar encompasses claims

predicated on violations of the United States Constitution. *Delgado* applied the bar to due process and equal protection claims. *Delgado*, 643 F.3d at 54-55; accord, *Villatoro v. Shanahan*, No. 26-cv-1210, 2026 WL 948297, at *2-3 (E.D.N.Y. Apr. 7, 2026) (Donnelly, J.) (§§ 1252(a)(5) and 1252(b)(9) barred claim predicated on due process violation); *Jimenez v. Shanahan, et al.*, No. 26-cv-1501, 2026 WL 1309291 (E.D.N.Y. May 13, 2026) (Cogan, J.) (§§ 1252(a)(5) and 1252(b)(9) barred Fourth Amendment challenge to stop and arrest that led to his detention); *Sauceda Henriquez v. Noem*, 25-cv-7023, 2026 WL 111665, at *4 (E.D.N.Y. Jan. 15, 2026) (DeArcy Hall, J.) (“That Petitioners challenge their detention as violative of due process . . . and the Suspension Clause . . . does not alter the Court’s inability to review the Petition”), *appeal filed* January 29, 2026; *Oriakhi v. DHS*, 762 F. Supp. 3d 183 (E.D.N.Y. 2025) (Matsumoto, J.) (dismissing due process challenge to removal order as barred by § 1252(a)(5)), *aff’d*, No. 25-243-cv, 2026 WL 303642 (2d Cir. Feb. 5, 2026) (dismissing due process challenge to removal order as barred by § 1252(a)(5)); *Villatoro v. Noem*, 2025 WL 2880140 at *3 (§ 1252(a)(5) barred claim predicated on alleged due process violation).

The jurisdictional bar also extends to claims predicated on statutory violations. The Second Circuit applied that bar to claims under the APA in *Delgado*, 643 F.3d at 54-55. In *Villatoro v. Shanahan*, 2026 WL 948297, at *2-3, Your Honor held that §§ 1252(a)(5) and 1252(b)(9) barred a claim that the detention of the petitioner “is ‘without statutory authority’”. And the Court in *Villatoro v. Noem* applied that bar to claims under the APA and the Immigration and Nationality Act, based on the contention that ICE lacked legal authority to remove the petitioner. *Villatoro v. Noem*, 2025 WL 2880140 at *2-3 (citing § 1252(a)(5)); *see also Saucedo Henriquez*, 2026 WL 111665, at *4 (APA claim subject to §§ 1252(a)(5) and 1252(b)(9) bar).

District courts in this Circuit have dismissed challenges to detention filed by aliens who were being detained for the purpose of effectuating their removal. In *Villatoro v. Shanahan*, No. 26-cv-1210, 2026 WL 948297 (E.D.N.Y. Apr. 7, 2026) (Donnelly, J.), the petitioner, who was detained by ICE for the purposes of removing him, sought an order directing ICE to release him from custody and prohibiting ICE from removing him. Your Honor held that the action was barred by §§ 1252(a)(5) and 1252(b)(9) as an indirect challenge to the petitioner’s final order of removal order because granting the relief sought by the petitioner “would frustrate the government’s ability to enforce the removal order.” *Id.* at *3.

In *Sauceda Henriquez*, ICE detained the petitioners for the purpose of effectuating their removal. The petitioners challenged their detention on due process and other grounds. The Honorable LaShann DeArcy Hall held that §§ 1252(a)(5) and 1252(b)(9) jurisdictionally barred that challenge because the challenge was “‘inextricably linked to’ a removal order. *Sauceda Henriquez*, 2026 WL 111665, at *4 (quotation omitted). Judge DeArcy Hall also held that “a challenge to a petitioner’s detention, following an order of removal, constitutes . . . an indirect challenge to an order of removal” that is precluded by §§ 1252(a)(5) and 1252(b)(9). *Id.* (citing *Delgado*, 643 F.3d at 55).

In *Villatoro v. Noem*, 2025 WL 2880140, at *4, the petitioner, who was subject to a final order of removal, challenged his detention by arguing that his removal period had ended. The Honorable Orelia E. Merchant held that the challenge was a direct attack on his removal order and thus barred by § 1252(a)(5); accord, *Ceesay v. Bondi*, 25-cv-3716, 2025 WL 1435615, at *2 (S.D.N.Y. May 16, 2025) (§ 1252(a)(5) barred, as an indirect challenge to a removal order, an

action for an order prohibiting ICE from detaining the petitioner for the purpose of removing him, because such an order “would . . . interfere with the execution of a lawful removal order”); *Rodriguez*, 2023 WL 2632200, at *4 (S.D.N.Y. Mar. 23, 2023) (§§ 1252(a)(5) and 1252(b)(9) barred an action “seek[ing] an end to [the petitioner’s] detention, which was undertaken for the precise purpose of effectuating his existing removal orders”).

An expedited removal order like the one issued for Petitioner in 2012 is “final” and subject to the jurisdictional bar. “[I]n streamlined removal proceedings . . . the order becomes final immediately upon issuance.” *Riley v. Bondi*, 606 U.S. 259, 267 (2025); *see also id.* at 290 (describing the order at issue in *Riley* as an expedited removal order) (partial dissent of Sotomayor, J.); *accord Harriot v. Jamison*, No. 24-cv-208, 2025 WL 384556, at *4 (S.D.N.Y. Feb. 4, 2025); *Solar-Chima v. Emmerich*, No. 24-cv-456 (W.D. Wisc. July 24, 2025) (citing *Riley*, 606 U.S. at 267). Likewise, the order reinstating Plaintiff’s prior removal order is “final.” *See Delgado*, 643 F.3d at 54-55 (treating Delgado’s reinstated expedited removal order as a “final order” for purposes of § 1252(b)(9)); *Bhaktibhal-Patel v. Garland*, 32 F.4th 180, 182 (2d Cir. 2022) (“a reinstatement order becomes final once the agency’s review process is complete”), *abrogation on other grounds recognized*, *Azamov v. Bondi*, 2025 WL 3096713, at *2, n.2 (2d Cir. Nov. 6, 2025)).

Here, the jurisdictional bar applies to Petitioner’s claims and requires dismissal of this case. ICE arrested and detained Petitioner for the purpose of enforcing the reinstated final order of removal, and, as a result, his challenge to the stop, arrest, and detention is jurisdictionally barred. Sections 1252(a)(5) and 1252(b)(9) deprive this Court of jurisdiction to review Petitioner’s demand for an order directing Respondents to release him from custody and his underlying contentions of violations of law by ICE.. *See, e.g., Villatoro v. Shanahan*, 2026 WL 948297, at *2-3;; *Sauceda Henriquez*, 2026 WL 111665, at *4; *Villatoro v. Noem*, 2025 WL 2880140, at *4.

Furthermore, the Court should vacate the stay of removal issued as part of the Court’s Order dated May 28, 2026. That provision of the Order is the sole impediment to the removal of Petitioner. Decl. ¶ 21. Honduras, Petitioner’s native country, participates in the Electronic Nationality Verification Program, which facilitates removal to that country of an individual without a current or valid transportation document already available. *Id.* Through this program, a temporary travel document will be quickly and electronically procured for the Petitioner, with his nationality and citizenship being verified through biographic and biometric information. *Id.* Because ICE has detained Petitioner for the sole purpose of effectuating his removal, §§ 1252(a)(5) and 1252(b)(9) jurisdictionally bar this Court from prohibiting his removal. *See Ceesay*, 2025 WL 1435615, at *2 (denying motion for an order barring ICE from removing the petitioner); *see also Villatoro v. Shanahan*, 2026 WL 948297, at *3 (denying relief that “would frustrate the government’s ability to enforce the removal order”).

B. This Action Is Also Jurisdictionally Barred By 8 U.S.C. § 1252(g)

Another Congressionally enacted jurisdictional bar independently precludes review of Petitioner’s anticipated removal. 8 U.S.C. § 1252(g), in relevant part, provides that, with exceptions not relevant here, “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action . . . to execute removal orders against any alien under this chapter.” “[B]y its plain terms, 8 U.S.C. § 1252(g) strips district courts of

jurisdiction over claims attacking the Government's decisions or actions to execute removal orders." *Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019). Section 1252(g) thereby precludes district courts from issuing an order that would prevent or hinder ICE from executing a removal order, *i.e.*, removing an individual who is the subject of a final order of removal. *Troy as Next Friend Zhang v. Barr*, 822 Fed. Appx. 38, 39 (2d Cir. 2020). Congress enacted § 1252(g) in order to avoid the "deconstruction, fragmentation, and hence prolongation of removal proceedings." *Reno v. Arab-American Anti-Discrimination Committee*, 525 U.S. 471, 487 (1999) ("*AADC*").

Notably, § 1252(g) bars *all* claims challenging the execution of a removal order, so the bar is not limited to claims that challenge ICE's discretionary conduct, and therefore also includes challenges to conduct that allegedly violates federal law, including, without limitation, a provision of the United States Constitution. *See, e.g., AADC*, 525 U.S. at 488 (§ 1252(g) barred First Amendment challenge to deportation); *Jean-Baptiste v. Reno*, 144 F.3d 212, 214, 218 (2d Cir. 1998) (§ 1252(g) barred Fifth Amendment due process challenge to deportation); *K.K. v. Garland*, No. 23-cv- 6281, 2025 WL 274431, at *2 (W.D.N.Y. Jan. 23, 2025) (dismissing action alleging violations of "various constitutional, statutory and regulatory provisions", citing, *inter alia*, *Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022), *Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021), *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021)), *appeal dismissed sub nom. K.K. v. Bondi*, No. 25-190 (2d Cir Apr. 8, 2025); *accord, Tazu v. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020). "Otherwise, § 1252(g) would be a paper tiger; any petitioner challenging the execution of a removal order could characterize his or her claim as an attack on [ICE]'s 'legal authority' to execute the order and thereby avoid § 1252(g)'s bar." *E.F.L.*, 986 F.3d at 965 (affirming dismissal of action that challenged, on due process and statutory grounds, the execution of a removal order).

The holdings of those decisions are fully consistent with Supreme Court case law on statutory construction. Section 1252(g) by its terms bars "*any* cause or claim" (emphasis added). The Supreme Court, in construing 8 U.S.C. § 1252(a)(2)(B)—like § 1252(g), enacted as part of § 306 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (1996) ("*IIRIRA*")—held that "the word 'any' has an expansive meaning." *Patel v. Garland*, 596 U.S. 328, 338 (2022) (quotation omitted). *Patel's* construction of "any" in § 1252(a)(2)(B) applies with special force to the use of the same word in § 1252(g) because of "the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." *See Gustafson v. Alloyd Co. Inc.*, 513 U.S. 561, 570 (1995) (internal quotation marks omitted). Thus, § 1252(g) bars any and all types of claims that challenge the execution of a removal order, including without limitation claims alleging violations of federal law.

Additional Supreme Court jurisprudence on statutory construction confirms that the § 1252(g) bar is not limited to claims that challenge ICE's discretionary conduct. Section 1252(g)'s wording contains no such limitation, and courts "may not engraft [their] own exceptions onto the statutory text." *Schein*, 586 U.S. at 70. Notably, the Congress that enacted *IIRIRA* knew how to limit a jurisdiction-stripping statute's reach to discretionary matters when that Congress wished to do so. The aforementioned § 1252(a)(2)(B) bars challenges "to (i) any judgment regarding the granting of relief under [specified statutes], or (ii) any other decision or action . . . which is specified in this subchapter to be *in the discretion* of the Attorney General or the Secretary of

Homeland Security [with one specified exception]” (emphasis added). Section 1252(g), by contrast, does *not* include any language limiting its reach to discretionary matters, and thus cannot be construed to include such a limitation. See *Hardt v. Reliance Life Ins. Co.*, 560 U.S. 242, 251-52 (2010). In *Hardt*, the Supreme Court held that a party need not be a prevailing party in order to recover attorney’s fees under one subsection of a statute, because the wording of that subsection included no prevailing-party requirement, while the wording of another subsection of the same statute did include such a requirement. *Id.* The Supreme Court described the court of appeals’ reading a prevailing-party requirement into the first subsection as akin to “‘invent[ing] a statute rather than interpret[ing] one.’” *Id.* (quoting *Pasquantino v. United States*, 544 U.S. 349, 359 (2005) (alterations by *Hardt*); accord *Romang Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 215 (2020) (“read[ing] into statutes words that aren’t there . . . [is] a temptation that we are doubly careful to avoid when Congress has . . . included the term in question elsewhere in the very same statutory provision”; declining to construe one subsection of a statute as requiring the plaintiff to prove intent in order to prevail because, unlike that subsection, another subsection of the same statute expressly required proof of intent).³

Section 1252(g) jurisdictionally bars claims for release from detention that, if granted, “would bar ICE from effectuating [the petitioner’s] removal.” *Lin v. Borgen*, No. 25-cv-5618, 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025). *Lin* held that § 1252(g) barred the petitioner’s claim because his removal was imminent—he had provided his birth certificate to ICE and all that ICE needed to remove him was a travel document from his native country. *Id.* Here, Petitioner’s removal is imminent, as demonstrated above.

C. This Action Is Also Jurisdictionally Barred By 8 U.S.C. §§ 1252(a)(2)(A), 1252(e)

Even if 8 U.S.C. § 1252(a)(5), (b)(9), and (g) failed to each independently bar this suit, Congress enacted further limitations that would preclude review here. Specifically, 8 U.S.C. § 1252(a)(2)(A) “imposes a broad prohibition on judicial review of expedited removal determinations, procedure, and policies, with narrow exceptions ‘provided in subsection (e)’ of the same section”, to wit, 8 U.S.C. § 1252(e). *Rodriguez*, 2023 WL 2632200, at *3 (quoting § 1252(a)(2)(A)). Section 1252(e) provides for judicial review of expedited removal orders, but only in district court habeas proceedings. *I.M. v. USCPB*, 67 F.4th 436, 438 (D.C. Cir. 2023).

Significantly, where, as here, the expedited removal order has been reinstated, “[j]udicial review is further restricted.” *Wei Chen v. Napolitano*, No. 12-cv-4620, 2012 WL 5458064, at *3 (S.D.N.Y. Nov. 8, 2012). 8 U.S.C. § 1231(a)(5) expressly and unambiguously provides that the prior removal order “is not subject to being . . . reviewed”. Section 1231(a)(5) thereby bars “any collateral review of the reinstated order.” *Garcia-Villeda v. Mukasey*, 531 F.3d 141, 150 (2d Cir. 2008).

In any event, to the extent that an expedited removal order is reviewable at all, § 1252(e)(2) limits the scope of habeas review for that order. “[S]uch review is strictly ‘limited to determination of . . . (A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under [the expedited removal] section, and (C) whether the petitioner . . . is an alien lawfully admitted

³ Accordingly, *Gondal v. USDHS*, 343 F. Supp. 3d 83, 92 (E.D.N.Y. 2018) (Spatt, J.), incorrectly limited the § 1252(g) bar to challenges to discretionary conduct.

for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title”: *Rodriguez*, 2023 WL 2632200, at *3 (quoting § 1252(e)(2)) (alterations by *Rodriguez*).

Here, Petitioner’s challenges are the types of challenges that may not be raised in habeas under §§ 1252(a)(2)(A) and 1252(e). The Petition does not expressly deny that he is subject to a reinstated order of expedited removal. To the extent the Court construes the Complaint as alleging that there was no removal order, such an allegation is factually baseless. In fact, as Respondents have demonstrated, Petitioner was ordered removed in 2012 and that 2012 Removal Order was reinstated in February 2014 and May 2026. Decl. ¶¶5-7, 9-10, 16.

II. THE CHALLENGE TO DETENTION FAILS ON THE MERITS, BECAUSE PETITIONER IS LAWFULLY DETAINED PURSUANT TO 8 U.S.C. § 1231(a)(5).

If *arguendo* not jurisdictionally barred, the Court should reject Petitioner’s challenge to his detention on the merits. Petitioner’s detention pursuant to the reinstated removal order is proper under 8 U.S.C. § 1231(a)(5). Once an alien becomes subject to a final removal order, the authority for his continued detention is 8 U.S.C. § 1231(a). *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) (“The section at issue here, 8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals ‘ordered removed.’”); *Wang v. Ashcroft*, 320 F.3d 130, 145 (2d Cir. 2003) (“8 U.S.C. § 1231 governs the detention of aliens subject to final orders of removal.”). This includes aliens subject to reinstated orders of removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 542 (2021). With respect to reinstated orders of removal, the order is final upon reinstatement. *See Delgado*, 643 F.3d at 54-55 (treating Delgado’s reinstated expedited removal order as a “final order” for purposes of § 1252(b)(9)); *Bhaktibhal-Patel*, 32 F.4th at 182 (“a reinstatement order becomes final once the agency’s review process is complete”); *Islam v. Philips*, No. 14-cv-930, 2015 WL 1915106, at *3 (W.D.N.Y. Apr. 27, 2015) (collecting cases); *Khemlal v. Shanahan*, No. 14-cv- 5186, 2014 WL 5020596, at *3 (S.D.N.Y. Oct. 8, 2014) (order became administratively final when it was reinstated).

Further, § 1231 establishes a 90-day “removal period” within which the government generally must secure removal after a removal order becomes final, and during which the government “shall” detain the alien until such removal. *See* 8 U.S.C. §§ 1231(a)(1)(A), (B)(i), (a)(2)(A) (“During the removal period, the Attorney General shall detain the alien.”). Petitioners detained under § 1231 are not entitled to an individualized custody determination or bond hearing. *See Guzman*, 594 U.S. at 526 (holding that Section 1231 governs detention of noncitizens who are subject to reinstated orders of removal, not § 1226, such that the bond provisions of Section 1226 do not apply); *Portillo v. Decker*, No. 21-cv-9506, 2022 WL 826941, at *4 (S.D.N.Y. Mar. 18, 2022) (“the remedy of a release on bond—available to certain noncitizens whose removal proceedings are ongoing, *see* 8 U.S.C. § 1226(a)—is unavailable to noncitizens like Portillo who have already been ordered removed”); *Khemlal*, No. 2014 WL 5020596, at *3 (“Khemlal’s contention that he is entitled to a bond hearing also is without merit, because he is not detained pursuant to 8 U.S.C. § 1226, but rather is detained pursuant to 8 U.S.C. § 1231” as an alien with a reinstated removal order).

It is true that aliens subject to a reinstated removal order may seek to prevent removal to a specific country by obtaining a statutory withholding of removal or relief under the Convention against Torture. *Guzman*, 594 U.S. at 530-32; 8 C.F.R. § 241.8(e). However, an alien seeking such relief is nevertheless subject to a reinstated removal order, and thus his detention while in withholding-only removal proceedings is governed by 8 U.S.C. § 1231(a) because the “removal order is not vacated or otherwise set aside” and “remains in full force. *Id.* at 535-36, 540-42.

III. PETITIONER’S STOP AND ARREST WERE PROPER UNDER THE FOURTH AMENDMENT

If *arguendo* not jurisdictionally barred, the Court should reject Petitioner’s Fourth Amendment challenge on the merits. The Fourth Amendment guarantee against unreasonable searches and seizures “extend[s] to brief investigatory stops of persons or vehicles that fall short of traditional arrest,” including stops of individuals suspected of being in the United States illegally. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). By virtue of “the limited nature of the intrusion,” however, “stops of this sort may be justified on facts that do not amount to the probable cause required for an arrest.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 880 (1975). Instead, an officer may conduct such a stop based on reasonable suspicion—supported by “specific articulable facts, together with rational inferences from those facts”—that a person is an illegal alien. *Id.* at 884; see 8 C.F.R. § 287.8(b)(2). Reasonable suspicion requires only “‘some minimal level of objective justification’ for making the stop,” a standard that is “obviously less demanding than that for probable cause,” *Sokolow*, 490 U.S. at 7 (citation omitted)—which is itself “not a high bar,” *Kaley v. United States*, 571 U.S. 320, 338 (2014). Given that probable cause “is something more than a bare suspicion, but need not reach the fifty percent mark,” reasonable suspicion requires even less certainty. See *United States v. Garcia*, 179 F.3d 265, 269 (5th Cir. 1999). The reasonable-suspicion inquiry “turn[s] on the totality of the particular circumstances.” *Brignoni-Ponce*, 422 U.S. at 885 n.10; see *Arvizu*, 534 U.S. at 273.

Notably, ethnicity is a factor that can contribute to reasonable suspicion in appropriate circumstances—for instance, if agents know that the members of a criminal organization under investigation are disproportionately members of one ethnic group—even if it would not be relevant in other circumstances. See *Brignoni-Ponce*, 422 U.S. at 885-886 (“apparent Mexican ancestry” did not “alone” supply reasonable suspicion). And, in context, officers might reasonably rely on the fact that someone exclusively speaks Spanish to support reasonable suspicion that the person is here illegally, not least because a disproportionate percentage of illegal aliens in the Central District speak Spanish and do not speak English fluently or at all. See, e.g., *United States v. Manzo-Jurado*, 457 F.3d 928, 937 (9th Cir. 2006) (the fact that a group was “speaking to each other only in Spanish” was “relevant to the reasonable suspicion inquiry”).

Here, ICE officers had reasonable suspicion to stop the Petitioner. Specifically, on May 14, 2026, ICE officers observed a male subject (who turned out to be Petitioner) match the description of an intended alien target. Decl. ¶14. ICE observed Petitioner outside the target’s listed residence get into a vehicle with three other male individuals. *Id.* ICE Officers then initiated a vehicle stop in the vicinity of Route 208 and the entrance of Route 17M in Monroe, New York. *Id.* In these circumstances, ICE officers were permitted to conduct a vehicle stop based on reasonable suspicion that a person in the vehicle was an illegal alien. See 8 U.S.C. §1357(a) (permitting officers to, without a warrant, “interrogate any alien or person believed to be an alien as to his right

to be or to remain in the United States”); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (an officer may conduct a vehicle stop based on reasonable suspicion—supported by “specific articulable facts, together with rational inferences from those facts”—that a person in the vehicle is an illegal alien); *Noem v. Vasquez Perdomo*, 146 S. Ct. 1 (2025) (Kavanaugh, J.) (concurring) (explaining that “reasonable suspicion that [an] individual is illegally present in the United States” is all that is required to “stop an individual for brief questioning about immigration status,” that it is “a lesser requirement than probable cause,” and that it is based on “the totality of the circumstances”).

ICE Officers, in high visibility police markings, approached the vehicle which had tinted windows to the rear passenger seats. Decl. ¶14, Ex. H. At this time, ICE Officers identified themselves and asked the driver for his name for identification purposes. *Id.* The driver refused to open the door and refused to put the vehicle into park. *Id.* ICE Officers requested the driver to open the window multiple times in order to identify the subjects in the back seat. *Id.* The driver refused to open the window. *Id.* ICE Officers broke the window of the vehicle. *Id.* The officers asked the driver (who was the Petitioner) to put the vehicle in park and to step out of the vehicle. *Id.* In these circumstances, ICE officers were permitted to briefly detain the driver - who turned out to be Petitioner instead of the target individual - for questioning, as they had reasonable suspicion that he was an alien illegally in the U.S. *See* 8 U.S.C. §1357(a) (permitting officers to, without a warrant, “interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States”); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (an officer may conduct a vehicle stop based on reasonable suspicion—supported by “specific articulable facts, together with rational inferences from those facts”—that a person in the vehicle is an illegal alien); *Noem v. Vasquez Perdomo*, 146 S. Ct. 1 (2025) (Kavanaugh, J.) (concurring) (explaining that “reasonable suspicion that [an] individual is illegally present in the United States” is all that is required to “stop an individual for brief questioning about immigration status,” that it is “a lesser requirement than probable cause,” and that it is based on “the totality of the circumstances”).

Petitioner stepped out and presented a New York State Driver License. Decl. ¶14, Ex. H. ICE Officers conducted a records check on the scene which revealed that Petitioner was a re-entry who had been removed from the United States two times. *Id.* Petitioner admitted to ICE Officers that he was born in Honduras and voluntarily admitted that he illegally entered the United States along the U.S./Mexico border sometime in 2014. *Id.* Records checks also revealed Petitioner did not have legal status or any entry information following his 2014 removal. *Id.*; *see also* Ex. H. At approximately 7:15 a.m., ICE Officers arrested Petitioner without a warrant pursuant to 8 C.F.R. 287.8(C)(2)(iii) because they determined he was flight risk and was likely to abscond before a warrant could be obtained based on his two prior removal orders, his unlawful entry into the United States without inspection, as well as his limited ties to the community. Decl. ¶14.

ICE had a probable cause to arrest Petitioner. “Probable cause requires an officer to have ‘knowledge or reasonably trustworthy information sufficient to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested.’” *Panetta v. Crowley*, 460 F.3d 388, 395 (2d Cir. 2006) (quoting *Martinez v. Simonetti*, 202 F.3d 625, 634 (2d Cir. 2000)). In the immigration context, to make a *warrantless* arrest, an officer need only have “reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest[.]” 8 U.S.C. §

1357(a)(2); *Noem*, 146 S. Ct. at 1 (2025) (Kavanaugh, J.) (concurring, J.) (“If [an] individual is illegally in the United States, the officers may arrest the individual and initiate the process for removal.”).

Petitioner’s Property

In further Response to this Court’s Order dated May 28, 2026, Petitioner’s property at the time of arrest included currency totaling \$186.00 and one wallet, one black belt, 1 black cup, and 3 grey chains. Ex. L.

* * * *

Accordingly, the Petition should be denied and this Court’s Order enjoining Petitioner’s removal should be vacated.

Respondents thank the Court for consideration of this submission.

Respectfully submitted,
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